

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

|                      |                              |
|----------------------|------------------------------|
| IN THE MATTER OF:    | ADMINISTRATIVE CONSENT ORDER |
| NICHOLS ALUMINUM LLC | NO. 2010-AQ- 30              |

TO: Nichols Aluminum LLC  
CT Corporation System, Registered Agent  
2222 Grand Avenue  
Des Moines, Iowa 50312

Nichols Aluminum LLC  
1725 Rockingham Road  
Davenport, Iowa 52802

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Nichols Aluminum LLC (Nichols Aluminum) for the purpose of resolving violations of the requirements to timely submit Title V program reports and fees. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryan Bunton  
Iowa Department of Natural Resources  
Air Quality Bureau  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-0363

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-6243

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Nichols Aluminum is a manufacturer of coated and mill finish aluminum sheets used for a variety of applications. Nichols Aluminum operates two facilities in Davenport, Iowa: Nichols Aluminum Davenport facility (Facility No. 82-01-017), which manufactures aluminum rolling and offers drawing and coating services, and Nichols Aluminum Casting facility (also called Quanex Corporation) (Facility No. 82-01-089), which recycles scrap aluminum and manufactures sheet aluminum. Estimated sales from both facilities range from \$50 to \$100 million dollars annually and each facility has roughly 150 employees.

2. Nichols Aluminum Davenport was issued its original Title V operating permit (Permit No. 03-TV-017) on December 20, 2000, and Nichols Aluminum Casting was issued its original Title V operating permit (Permit No. 00-TV-060) on June 16, 2003. Issuance of these multi-year Title V permits created various reporting and fee paying requirements associated with the Title V program.

3. March 31, 2006, was the deadline for submittal of the Semi-Annual Monitoring Report for July 1 through December 31, 2005, and the Annual Compliance Certification for the year 2005. The report and compliance certification were not timely submitted for Nichols Aluminum Casting. On April 4, 2006, DNR received the 2005 Annual Compliance Certification for Nichols Aluminum Casting. On April 5, 2006, DNR issued a Notice of Violation letter to Nichols Aluminum Casting for failure to submit the Annual Compliance Certification by the March 31 due date.

4. March 31, 2007, was the deadline for submittal of the Title V Emissions Inventory for the year 2006. Title V Emissions Inventories for both facilities were not timely submitted. On April 3, 2007, DNR received the 2006 Title V Emissions Inventories for both Nichols Aluminum Casting and Nichols Aluminum Davenport. DNR issued Notice of Violation letters to both facilities for failure to submit the Title V Emissions Inventory by the March 31 due date.

5. On January 22, 2009, DNR issued Title V operating permit No. 00-TV-060-R1 to Nichols Aluminum Davenport. On June 29, 2009, DNR issued Title V operating permit 03-TV-017-R1 to Nichols Aluminum Casting. Issuance of these

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permits continued the various reporting and fee paying requirements associated with the Title V program.

6. July 1, 2009, was the deadline for submittal of Title V Fees for the year 2008. Title V fees for both facilities were not timely submitted. On July 10, 2009, DNR issued Notice of Violation letters to Nichols Aluminum Casting and Nichols Aluminum Davenport for failure to submit the Title V fees by the July 1 due date. The 2008 Title V fees for both facilities were paid on July 27, 2009.

Nichols has denied the violations asserted herein, but is willing to enter into this Consent Order in settlement of disputed claims.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to the provisions of Iowa Code section 455B.133, 567 IAC 22.104 was adopted, which states that no source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. Both Nichols Aluminum facilities have failed to comply with the Title V operating permits in the following particulars.

(a) General Condition G4 of Title V Permits Nos. 03-TV-017-R1 and 00-TV-060-R1 requires that by March 31 of each year, the permittee shall submit compliance certifications for the previous calendar year. Nichols Aluminum submitted the compliance certificates due March 31, 2006 on April 4, 2006.

(b) Pursuant to the provisions of Iowa Code section 455B.133, 567 IAC 22.108(5) and 22.108(15) were adopted. 567 IAC 22.108(5) requires the submittal of reports of any required monitoring at least every six months. 567 IAC 22.108(15)"e"(1) requires that permits shall include the frequency of submissions of compliance certifications, which shall not be less than annually. General Condition G5 of Title V Permit Nos. 03-TV-017-R1 and 00-TV-060-R1 requires that by March 31 and September 30 of each year, the permittee shall submit a report of any monitoring required under this permit for the 6 month periods of July 1 to December 31 and January 1 to June 30, respectively. Nichols Aluminum submitted the reports due March 31, 2006 on April 4, 2006.

(c) Pursuant to the provisions of Iowa Code section 455B.133, 567 IAC 22.106(3) was adopted, which requires that Title V fees be submitted by affected facilities annually by July 1. General Condition G6 of Title V Permit Nos. 03-TV-017-R1 and 00-TV-060-R1 requires that the permittee shall pay an annual fee based on

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the total tons of actual emissions of each regulated air pollutant. Beginning July 1, 1996, Title V operating permit fees are due on July 1 of each year. The fee shall be based on emissions for the previous calendar year. Nichols Aluminum submitted the fees due on July 1, 2009 on July 27, 2009.

(d) Pursuant to the provisions of Iowa Code section 455B.133, 567 IAC 22.106(3) also requires that forms be submitted annually by March 31 documenting actual emissions for the previous calendar year. General Condition G6 of Title V Permit Nos. 03-TV-017-R1 and 00-TV-060-R1 requires that forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year. Nichols Aluminum submitted the documentation due March 31, 2007 on April 3, 2007.

**V. ORDER**

THEREFORE, DNR orders and Nichols Aluminum agrees to the following:

1. Submit all future Title V Annual Compliance Certifications, Semi-Annual Monitoring Reports, Emissions Inventories, Fees and Permit Renewal Applications in a timely manner; and
2. Pay a penalty of \$1,500.00 within 45 days of the date this order is signed by the Director.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,500.00 is assessed by this administrative consent order. The penalty must be paid within 45 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

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Economic Benefit – Nichols Aluminum received an economic benefit by delaying its submission of the aforementioned certifications, reports and fees. However, the economic benefit appears to be minimal and DNR is not assessing an economic benefit penalty at this time.

Gravity of the Violation – Failure to submit required reporting documents in a timely manner prevents DNR, as well as the public, from promptly being informed of the facility's compliance status with regard to state and federal air quality law. In addition, Title V fees are required to administer the air programs required under the Clean Air Act. Therefore, \$1,000.00 is assessed for this factor.

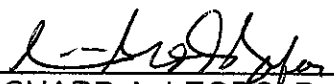
Culpability – Nichols Aluminum has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's requirements. Nichols Aluminum is well aware of the Title V reporting and fee paying requirements, having been issued initial Title V operating permits in 2000 and 2003. In addition, both Nichols Aluminum facilities have been issued several Notice of Violation letters for late submittal in previous years. For this reason \$500.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Nichols Aluminum. For that reason, Nichols Aluminum waives its rights to appeal this order or any part thereof.

## VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 23 day of  
June, 2010.

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Nichols Aluminum LLC

Dated this 4<sup>th</sup> day of  
JUNE, 2010.

Facility Nos. 82-01-089 and 82-01-017; Anne Preziosi; DNR Field Office 6; VII.C.2

RECEIVED

JUN 10 2010

LAKE & WATERMAN LLP